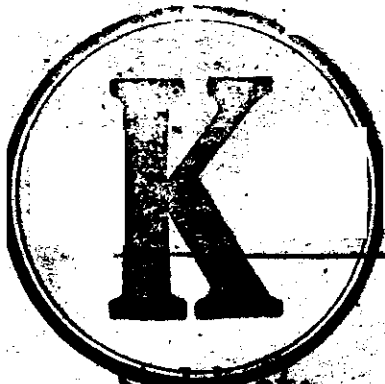


1951

File No. ^{O. Land} Improvement



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Legal Department
A BRANCH

Subject:— Opinion under the
Bombay Land Improvement
Schemes Act, 1942.

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File No. O. Land Improvement/51

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Legal Department File No. O. Land Improvement /51.

Sr. No.	H.I. / O. No.	Subject	Pages.
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Opinions under the Bombay Land
Improvement Schemes Act, 1942.

12672
7-5-1951

Sections 11, 25 and 25A

Soil conservation works started
in Ahmednager, Sholapur,
Satara (South), Poona and
Dijapur Districts as a
scarcity measure - recovery
of costs from landowners -
whether it would be feasible
to resort to section 25A
of the Act.

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618

Bombay Land
Improvement
Schemes Act, 1942
Sects. 11 & 25.

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Office of the R.L.A.

It appears that by Government Resolution, Agriculture and Forest Department No.1401 dated the 17th April 1951, Government decided to start soil conservation works as a scarcity measure in Ahmednagar, Sholapur, ~~S&A~~ Satara (South), Poona and Bijapur Districts to provide employment to cultivators and directed the Collectors concerned to submit proposals under sub-section (1) of section 25 of the Bombay Land Improvement Scheme Act, 1942, "for dropping the procedure" and further directed that the entire expenditure on these works should first be borne by Government out of which 50% or Rs.20/- per acre whichever is less should be treated as subsidy and the balance be recovered from the land-owners concerned. The A.& F.D now propose to resort to section 25A of the Bombay Land Improvement Schemes Act, 1942, and to issue directions thereunder to carry out the works and to recover costs from the owners of lands because that department apprehends that it might not be possible to recover the costs of the schemes from the land-owners since the works have already begun, presumably, without framing the necessary schemes. R.L.A. is requested to advise whether it would be feasible now to resort to section 25A of the Bombay Land Improvement Schemes Act, 1942.

Government has already taken action under section 25(1) of the Act. If works are carried out in consonance with the provisions of that section the apprehension of the A & F.D. that it would not be competent to recover the costs of the schemes from the land-owners does not appear

appear to be well grounded. That department appears to rely on the R.L.A's opinion No.612 dated the 25th January 1943 where it was stated that "After a scheme is so made such works will form part of a statutory scheme and their maintenance, repair and use will then be regulated in accordance with the provisions of Chapter IV of the Act". It is nowhere stated in that opinion that the costs of the schemes could not be recovered from the land-owners. In fact, that was not the point raised from the R.L.A's consideration. Secretary R.D. had proposed to make a provision in the rules that in addition to matters specified in clauses (i) to (vii) of sub-section (1) of section 4 the scheme may make provision for completion and /or provision for the maintenance, repairs and use of works carried out under any scheme of the nature mentioned in the above clauses undertaken or executed otherwise than under the Bombay Land Improvement Schemes Act, 1942. R.L.A. opined in that opinion that it was not necessary to make any provision in the rules as proposed by the Secretary R.D. as the schemes undertaken and executed otherwise than under the Bombay Land Improvement Schemes Act, 1942, can be brought within the purview of that Act by issuing executive instructions for making a scheme under the Act in respect of such works and thereafter the provisions in respect of maintenance, repair and use of the works etc., provided in Chapter IV can be made applicable. Apparently, therefore, the question of recovery of costs from the land-owners was not considered by the R.L.A. in that opinion.

In the present case Government has already directed under section 25(1) the preparation

preparation of schemes in the areas, and after the schemes are submitted to Government it may sanction them, whereafter all the provisions of section 5 to 23 will apply (see section 25(3) of the Act). Under section 11(2) of the owners of land in the scheme will be liable to pay their proportionate costs of the scheme minus the subsidy as directed by Government. Pending the preparation of the scheme it is not necessary that the execution of the works should be stopped. Those works may continue to be executed and after the schemes are ready they may be sanctioned by Government.

In the circumstances, it does not appear necessary to resort to section 25A firstly, because, action has been already taken under section 25(1) and, secondly, because, the costs of the schemes can be recovered from the land-owners under section 11(2) of the Act.

It may be pointed out that sub-section (1) of section 25A empowers the Government to direct the preparation of a Scheme if it considers necessary in the interest of public. There is however no provision in the body of sub-section (1) of the section about Government's power to execute the scheme, or about the costs and their recovery. In the circumstances, the provision in sub-section (2) for the recovery of the cost of the scheme from land-owners is meaningless. The A & F.D. cannot therefore have the schemes executed by Government under section 25A(1) as it stands and much less recover their cost from the land owners concerned.

o/c

Sd/-

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Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 12672 dated the 7th August

1951.